

**U.S. Department of Commerce  
Bureau of Industry and Security**

**Update 2011 Conference**

**Remarks of  
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Under Secretary for Industry and Security  
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Thank you, Dan. Good morning and welcome to BIS's twenty-fourth annual Update conference. Thanks to Bernie Kritzer, Toni Jackson and her staff, and the many other BIS and U.S. government colleagues who have contributed to this event.

I'd like to introduce the BIS management team. Please stand when I call your name. Please hold your applause until I've read everyone's name. We have Assistant Secretaries David Mills and Kevin Wolf, Deputy Under Secretary Dan Hill, Chief of Staff Sharon Yanagi, Deputy Assistant Secretaries Matt Borman and Don Salo, Director of Administration Gay Shrum, and Chief Information Officer Eddie Donnell.

Although Secretary Gary Locke is not here now, he will be with us later to introduce White House Chief of Staff Daley, our keynote speaker. Many of you remember the compelling case Secretary Locke made for reform at our 2009 Update conference. Since then, his forceful support of Export Control Reform (ECR) as a priority of the Department and the Administration has been vital to our progress. We thank Secretary Locke and wish him well in his new job as our Ambassador to China.

I want to thank Mike Froman, Deputy Assistant to the President, and Brian Nilsson of the National Security Council staff for their important work on ECR. Also, much of our progress is due to the terrific cooperation among the ECR interagency task force. The members of that group have played an essential role in facilitating reform while simultaneously doing their "day jobs." In addition, the public's involvement in the ECR, both from BIS's Technical Advisory Committees and in general responses to the rules proposed so far, has been a great help. I urge you to stay engaged and help us keep reform moving in the coming months.

**I. Introduction**

The Obama Administration's commitment to export control reform reflects an overriding national security imperative. The current system—based on Cold War-era laws, policies, practices, and controls—is not responsive to current threats and emerging challenges of the twenty-first century. The Administration launched ECR to rectify these shortcomings and to increase U.S. security and competitiveness.

Although the reform effort is not designed to increase jobs or reduce trade deficits, national security does extend beyond military security. As General James Jones, then the President's National Security Advisor, stated last year, "The future of the United States' national security in the twenty-first century is our competitiveness."

Last spring, Defense Secretary Gates set forth the Administration's decision that fundamental reform is needed for the sake of national security. He said that the system cannot do its job if it spends ninety-five percent of its time and energy on the easy cases. Reforming the system to concentrate on the hard cases will make us "better be able to monitor and enforce controls on technology transfers with real security implications while helping speed the provision of equipment to allies and partners who fight alongside us in coalition operations."

Reform is essential. It makes little sense to apply the same level of scrutiny to the export of every nut, bolt, and screw for a F-18 jet fighter aircraft that we apply to the export of the entire aircraft. Dispensing with the easy cases improves our security when it expands the capabilities of U.S. coalition partners. In a happy coincidence, that also increases the competitiveness of U.S. industry.

The ultimate result of the reform effort is to be a single control list, administered by a single licensing agency, operating on a single information technology platform, with enforcement coordinated by a single agency. Some of the reforms require legislation. We are working with the Congress on those aspects of the effort. Meanwhile, we will continue to strive toward positive, "tiered" control lists, a single information technology system, and an enforcement coordination center. Those regulatory improvements also are important in giving us the system we need.

## **II. List Review: Changes to the U.S. Munitions List (USML) and the Commerce Control List (CCL)**

Simplification and streamlining of the USML and the CCL is a critical element of the reform initiative. This activity is well under way. In December the Departments of Commerce and State published Advanced Notices of Proposed Rulemaking and State published a proposed rule to revise Category VII of the USML. These publications were designed to demonstrate how the control lists would be revised and tiered as part of this process. These parallel reviews share the same objectives: first, lists that categorize items based on stated and recognized objective technical parameters; and second, a tiered structure that provides more refined controls on sensitive items while taking into account the development, maturation, and spread of less sensitive technologies.

A positive USML is needed because today the majority of the items used by the military are developed and manufactured by the private sector. Under our current system, an item becomes a defense article when it is in any way "specifically designed, modified, adapted, or configured" for a defense end use, regardless of the military significance of the item itself. Basing controls and jurisdiction on "design intent" does not yield a predictable and transparent process for determining what is controlled. We need such a process. Application of the "design intent" criterion often leads to jurisdictional issues that result in U.S. items being "designed out" of foreign made end products, without providing commensurate protection for our national security.

The Administration is addressing these issues. Last December the Department of State issued a proposal to turn Category VII of the USML – which covers Tanks and Military Vehicles – into a positive category containing only militarily significant items. Less significant items, such as generic parts, components, accessories and attachments, would be transferred to the CCL once the congressional notification requirements of the Arms Export Control Act have been satisfied. The Department of Defense, along with representatives from Commerce, State, and other relevant agencies, is systematically revising the other nineteen categories of the USML, based in

part upon comments received in response to the December 2010 Federal Register notices. We anticipate that later this year, the Department of State will issue a final version of Category VII, which will be followed by proposed rules for Categories VI (Naval Vessels) and VIII (Aircraft). The plan is to have all USML categories, and the corresponding revised ECCNs in the CCL, written and final form well before the end of next year.

These changes to the ITAR and the EAR will benefit national security by improving interoperability and allowing us to focus our limited government resources on the most critical items and on destinations of concern. The changes also will benefit exporters. The elimination of ITAR registration for the production of the militarily less significant items that move to the CCL will benefit many small and medium-sized manufacturers and exporters for whom, in many cases, only a minor portion of their sales volume is now subject to ITAR controls. Changes in jurisdiction for most generic parts and components will significantly reduce the problems associated with the “see through” rule, which makes items manufactured offshore subject to U.S. reexport control if they contain any U.S.-origin ITAR parts or components, regardless of the value or significance of those U.S.-origin items. Additionally, there will be fewer instances where exporters must enter into Manufacturing Licensing Agreements or Technical Assistance Agreements—documents for which even minor amendments require a filing with the State Department and a waiting period for approval.

For our part, last Friday BIS issued a proposed rule addressing the treatment of militarily less significant items after they move from State to Commerce jurisdiction. This is the regulatory “vessel” into which we propose to “pour” the items to be transferred from the USML to the CCL. This is a central element of ECR. Our proposal would create a new “600” series of Export Control Classification Numbers (ECCNs) in the CCL to accommodate the transfer of products, parts and components from the USML, and would contain a single definition of “specially designed.” Assistant Secretary Kevin Wolf, our next speaker, will discuss this proposed rule in detail.

Enhancing the clarity and accuracy of control lists is not limited to the USML. We also seek to make the CCL more positive, clear, and accurate. An important reform objective is that a person who is not an expert on U.S. export controls, but who understands the technical capabilities of an item, should be able to determine jurisdiction and classification reliably.

We recognize that the U.S. Government doesn’t have complete knowledge about every item affected by ECR. For this reason, BIS sought public comment in December on whether CCL entries are based on understood, objective, and accepted technical parameters. In addition, to further assist in the establishment of controls by tier, the notice requested information on the foreign availability of CCL items.

### **III. The Parallel-Tiered Control Lists**

As described in several speeches last year and in the notices published in December, the Obama Administration has developed a three-tiered set of control list criteria to screen all items on the two primary lists of controlled items. Following completion of the list review effort, we anticipate additional changes to licensing policies for dual-use items and then changes for defense articles. The creation of two parallel lists will allow us to exercise greater control of the most sensitive items while establishing a process for cascading controls on more mature and widely available items.<sup>1</sup> The U.S. Government would then apply licensing policies associated with the tiers.

#### **IV. Licensing Policy**

On June 16, BIS published a significant change to the dual-use regulations, a change that is part of ECR. The new License Exception STA, which reflects interagency review and consideration of public comments, allows for the license-free export, with conditions, of many dual-use items to two groups of countries:

1. For exports to thirty-six countries—most European countries, plus Australia, Canada, New Zealand, Japan, South Korea, and Argentina—almost all items on the CCL that do not require a license for statutory reasons are eligible.
2. For eight countries—Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, and Taiwan—Wassenaar Basic List items are eligible.

This rule is the first step in implementing the Administration's vision of eliminating easy cases so the U.S. Government can focus its limited resources on items and end users that require more attention. STA facilitates trade and interoperability with our closest friends. The reduced licensing requirements are accompanied by new safeguards, however, to ensure that eligible items are not reexported outside this group of countries without U.S. Government authorization.

STA departs from the traditional licensing paradigm, wherein a license often has been required for the initial export but not the reexport. It establishes, in effect, a license free zone to cover the first transaction while creating new safeguards to ensure that items are not diverted outside the designated country group. The safeguards include requiring exporters and reexporters who use the STA exception to notify the purchaser of the applicable safeguard requirement. The foreign end user also must certify its willingness to comply with the conditions. To ensure a comprehensive understanding of STA safeguard requirements, BIS has been reaching out to companies that are likely beneficiaries of the license exception. We plan to enhance our outreach and compliance effort to guard against misuse and facilitate optimal usage of STA by exporters.

STA potentially will eliminate 3000 of the 22,000 licenses BIS issued last year. The advantages of this license exception—which, I stress, is not a decontrol—will increase as militarily less significant items are moved to the CCL and added to the new “600” series; under certain conditions, these items also will be eligible for certain provisions of STA.

We received many thoughtful comments, questions, and suggestions from the exporting community on the STA proposal. As the final version demonstrates, we were able to accept a number of them.

#### **V. Related Export Control Issues**

Notwithstanding our reform of the U.S. export control system, the federal government will continue its comprehensive sanctions against Cuba, Iran, North Korea, Syria, and Northern Sudan. The government also has no plans to alter its prohibitions on exporting Munitions List items to China or dual-use items for military end use in China.

As I said at last year's conference, a core principle for reform is ensuring an informed regulated community. This sold-out Update conference demonstrates the exporting community's abiding interest in compliance. BIS has a comprehensive outreach and education program, ranging from seminars to publications to one-on-one exporter counseling. This past year we began expanding our footprint by developing education initiatives covering the December 2010 Federal Register notices and the final STA rule that was published June 16.

BIS also has engaged in a public education effort to explain the relationship between the deemed export rule and the Department of Homeland Security's (DHS) I-129 form, required for certain non-immigrant visas, that now contains an export control certification. DHS's revised I-129 requirement has led many immigration lawyers, personnel specialists, and contracting offices to participate in our educational activities. Since the requirement took effect in February of this year, we've conducted a dozen outreach activities that attracted nearly 1100 new participants. Tomorrow, an interagency panel will discuss deemed export issues. We will continue to expand our regulatory education efforts.

Our outreach efforts are not limited solely to U.S. exporters. In the context of implementing U.N. Security Council Resolution 1540, which requires member nations to establish effective export control systems, BIS works with many other governments to share best practices and help strengthen the international non-proliferation network. During FY2011, BIS has participated in about two dozen international outreach events sponsored by the Department of State's Export Control and Related Border Security program. These dialogues help promote security cooperation and enable strong partnerships to address collaboratively the global threats of proliferation and terrorism.

The Bureau has developed a government-wide consolidated end user screening list to assist exporters in screening transactions. This list, which includes more than 24,000 entities, eliminates the need to navigate more than ten different U.S. Government screening lists to determine that transactions don't violate Commerce, State, or Treasury export or sanctions regulations. The consolidated list is updated regularly and reduces burdens, particularly for small and medium-sized exporters. The list is an important compliance tool that should help prevent inadvertent exports to entities on the Entity List, ITAR-debarred parties, Treasury specially designated nationals, and denied persons. The list has received more than 23,000 hits since December.

We soon will add more items to our export management and compliance tool kit. The additions include best practices for exporting through transshipment hubs as well as new electronic tools to help exporters make accurate and timely input into the Automated Export System. The latter will expedite clearance of exports and help support compliance reviews.

The Bureau will continue to use the Entity List and Temporary Denial Orders to prevent the unauthorized export of U.S. items, such as electronic components that could be used in improvised explosive devices, to those who would do us harm. The Entity List is a useful vehicle to apply surgical and precise actions to respond to compliance concerns. Such actions offer violators the option of changing their practices or losing business opportunities and potentially being forced out of business altogether.

We are working on several other ECR initiatives to make the system more user friendly, including harmonizing definitions across all export control and sanctions regulations, and developing a single license application form for the Departments of Commerce, State and Treasury.

As another part of our effort, we are going to upgrade our internal information technology system to leverage the resources and information of agencies across the government. The plan is to link State licensing officials to the Department of Defense's USEXPORTS system later this year, with their Commerce counterparts to follow by the spring of 2012. This will provide a more efficient process for reviewing transactions and responding to the public in a timely manner.

Establishing a single system for the license review process will enable the next step – moving to a single license application form on a single electronic portal. While this won't happen any sooner than late next year, we are going to be working with exporters of all sizes regarding the composition of this portal.

Another area where we are working to increase our interface with the public is through our website. We are in the process of revising not only its look but also how one finds data on export control issues, regulations, and enforcement questions. The “Franklin Square” room, which is located on this floor adjacent to the registration booths, has a beta version of the revised website running and our representatives would appreciate your comments. Finally, in response to your comments regarding the need for a more user friendly EAR, I would like to announce that we are in the process of adding to the BIS website a PDF of the old format of the EAR.

## **VI. Enforcement**

List review, regulatory and licensing efficiencies, and educational efforts do not tell the entire story. Enforcement will continue to have a high priority.

In November, the President signed an executive order to increase coordination among export control enforcement agencies. The order mandates the participation of BIS, the Federal Bureau of Investigation, military security agencies, Immigration and Customs Enforcement, and the Intelligence Community in an Export Enforcement Coordination Center to share information and leverage resources.

At last year's Update conference, I noted that BIS would be adjusting how we penalize those who violate U.S. export controls. BIS has typically imposed penalties on companies involved in export violations. Now, where a violation is the deliberate action of an individual, we consider seeking penalties against that individual. The penalties can include heavy fines, imprisonment, and the denial of export privileges—as well as actions against the company.

At the same time, we recognize that even companies with strong records can make mistakes. The submission of voluntary self-disclosures (VSDs) can serve as an important mitigating factor. We rely upon industry to play a major role in compliance. Your knowledge of your products, their end uses, and your customers puts you on the front line in this essential effort. I cannot overstate the critical role you play in securing compliance.

I again ask you to carry this message back to your senior management, your sales and marketing colleagues, and customers who market your products. Tomorrow, Assistant Secretary David Mills will discuss the actions that Export Enforcement is undertaking.

## **VII. Other BIS Programs**

Although ECR occupies much of the time of senior BIS management, no review of the state of BIS would be complete without my discussing our important defense industrial base (DIB) and treaty compliance activities.

Our DIB activities help ensure that our military has access to the cutting-edge technologies they require. The Bureau conducts four core activities in support of the DIB: priorities and allocations, foreign acquisition reviews, industrial capability studies, and advocacy in support of U.S. exporters. We will be issuing a proposed rule this year that implements recent amendments to the Defense Production Act.

We continue to prepare studies on key sectors of the DIB. These range from the health of the U.S. space industrial base to vulnerabilities in the telecommunications equipment supply chain to foreign dependencies of critical U.S. industrial sectors. The studies evaluate the health of the sector, conduct critical gap analyses, and recommend actions to enhance the health of particular sectors. We also contribute to the defense trade advocacy process.

The Bureau participates in the Committee on Foreign Investment in the United States (CFIUS), which reviews the national security implications of foreign acquisitions of United States businesses. We support CFIUS by drawing on our export control and defense industrial base knowledge.

Switching from defense industrial base issues, BIS handles important treaty compliance work. We are responsible for U.S. industry compliance with the Chemical Weapons Convention (CWC) and the Additional Protocol to the U.S.-International Atomic Energy Agency (IAEA) Safeguards Agreement. We also work on measures to enhance the Biological Weapons Convention (BWC).

BIS collects annual data declarations from the U.S. chemical industry for transmission to the Organization for the Prohibition of Chemical Weapons. The more than 800 declarations cover the activities of U.S. chemical facilities. In recent years, BIS has hosted an annual average of twenty inspections, by international inspectors, of U.S. facilities; since June 2000, BIS has supported 155 inspections.

BIS's treaty compliance responsibilities also extend to nuclear and biological activities. We host inspections and collect annual data declarations and related reports from U.S. industry on the nuclear and nuclear-related activities specified in the Additional Protocol of the International Atomic Energy Agency.

BIS soon will participate as part of the U.S. delegation to the 7th Biological Weapons Convention (BWC), which will set the international agenda on countering biological threats. BIS will bring U.S. industry into discussions on a full range of issues pertinent to the BWC. This is in accordance with the President's Open Government Initiative.

### **Conclusion**

The Bureau will continue to seek public involvement through outreach conferences, the publication of proposed rules, and our technical advisory committees. We also have asked the President's Export Council Subcommittee on Export Administration to provide input from a strategic level on the Administration's reform priorities, the scope of our outreach and education activities, and ways to measure the success of ECR in terms of increased competitiveness of the U.S. industrial base.

President Obama is committed to export control reform. My colleagues in the agencies and I are committed, too. Our commitment, combined with a strong and open dialogue with you, will help ensure that we fulfill the "three E's" I seek to accomplish at BIS—achieving greater efficiencies by focusing controls on the most important items and destinations, increasing education to sensitize all exporters to their compliance responsibilities, and increasing enforcement so that exporters comply with our regulations.

BIS and its sister agencies welcome your comments on the additional reforms that the Administration will announce in the coming months. I hope you find our Update program useful and I look forward to hearing your feedback. Thank you.

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<sup>1</sup> The U.S. Government has developed the following criteria to implement the tiered construct:

- 1) Tier 1 items are weapons of mass destruction and are almost exclusively available from the United States that provide a critical military or intelligence advantage.
- 2) Tier 2 items are almost exclusively available from regime partners or adherents and provide a substantial military or intelligence advantage, or make a substantial contribution to indigenous development, production, use or enhancement of a Tier 1 or Tier 2 item.
- 3) Tier 3 items are broadly available and provide a significant military or intelligence advantage or make a significant contribution to indigenous development, production, use or enhancement of a Tier 1, 2, or 3 item, or other items controlled for national security, foreign policy, or human rights reasons.